

Summary of Improvements to Lokpal Bill, 2011

Foundation for Democratic Reforms (FDR), Lok Satta and Save Democracy Front

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SI No.	Issue	Recommendations	Amendments to Lokpal Bill, 2011
1.	Jurisdiction over NGOs	<ul style="list-style-type: none"> ➤ Section 14(1)(g) refers to associations wholly or partly financed or aided by the Government. A clear definition with reasonable threshold is necessary to serve the purpose of law. ➤ Section 14(1)(h) refers to associations which are in receipt of any donation from public. With this definition, even political parties come under Lokpal. Regardless, organizations that are not receiving government support need not be investigated by Lokpal, as they can be prosecuted under the existing laws. Moreover, 14(1)(h) could be held to be violative of Article 19(1)(c) of the Constitution. 	<ul style="list-style-type: none"> ➤ The word “partly” needs to be defined (eg., more than 50% of the organizational budget or more than Rs. One crore annual grant from government). ➤ Section 14(1)(h) needs to be repealed.

2.	Lokayuktas in States	<ul style="list-style-type: none"> ➤ All Chief Ministers of States should be under Lokpal (preferably) or the Lokayuktas. ➤ Article 252 of the Constitution for enacting an enabling legislation for states is not sufficient, as it does not make empowered Lokayuktas mandatory in States. ➤ With the ratification of UNCAC, the Parliament, under Article 253 of the Constitution, has the power to make laws for the entire territory of India even on state subjects in matters relating to corruption. This power should be exercised. Also criminal law and criminal procedure are included in the concurrent list, giving Parliament the legislative jurisdiction in respect of Lokayuktas and related matters. ➤ The Prevention of Money Laundering Act has been enacted to fulfill India's international obligations and similarly Article 253 can be invoked to fulfill India's commitments under UNCAC. 	<ul style="list-style-type: none"> ➤ The State ACBs should be brought under the superintendence and guidance of Lokayuktas. Lokayukta will also supervise vigilance machinery in state. ➤ Lokayuktas should have the power to appoint Local Ombudsmen for each district and city, and they will deal with local government matters, and lower bureaucracy under the supervision of Lokayukta. ➤ The Lokayukta provisions, with the above improvements, should remain in the statute. However, in order to build consensus and ensure passage of the Bill, the proviso incorporated by Lok Sabha in section 1 (4) should be made even more explicit. Section 1(4) could be further strengthened to say that the Lokayukta chapter will apply to only those states that opt for it, and states are free to enact their own legislations. This will remove all ambiguity, and ensure broad political
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			consensus for passage of the Bill.
3.	Seamless Integration of CVC	<ul style="list-style-type: none"> ➤ CVC (Chairman + 2 members) should be ex-officio members of Lokpal, and should be appointed in the same manner as Lokpal. ➤ CVC will perform all functions as envisaged under law, except that the allegations against Group A officers and above will be referred to the Lokpal. 	<ul style="list-style-type: none"> ➤ Section 3(2)(c) should be inserted <i>“The central vigilance commissioner and two vigilance commissioners will function as ex-officio members of Lokpal”.</i> ➤ Section 3(3)(c) should be inserted <i>“as central vigilance commissioner and vigilance commissioners eligible to be appointed as per the provisions of the sections 3(3) of the CVC Act”.</i> ➤ A proviso should be incorporated in Section 4(1) of the Central Vigilance Commission Act, 2003 as follows: <i>“provided that every appointment under this sub-section shall be made after obtaining the recommendations of the Selection Committee as specified in the</i>

			<p>Lokpal and Lokayuktas Act – 2011”</p> <p>➤ Through the Lokpal Act, section 3(4) of the CVC Act should be amended to provide for appointment of the secretary to the CVC by the CVC itself. Therefore section 3(4) of the CVC Act, as amended should read as follows:</p> <p style="text-align: center;"><i>The Central Vigilance Commission shall appoint a secretary to the Commission on such terms and conditions as it deems fit to exercise such powers and discharge such duties as the Commission may by regulations specify in this behalf.</i></p>
4.	Amendments needed in Prevention of Corruption Act	<p>➤ Enlarging definition of corruption as recommended by the Second Administrative Reforms Commission (ARC).</p> <p>➤ Increasing the quantum of punishment in</p>	<p>➤ The following offenses should be appended to Chapter III in Prevention of Corruption Act, 1988.</p> <p style="padding-left: 40px;">(a) Abuse of office and authority (even</p>

	<p>& other laws</p>	<p>cases of collusive bribery, as recommended by the Second ARC. The “burden of proof” should be with the accused, as done in the case of Dowry related offenses (Section 498 of IPC).</p> <p>➤ Increasing the quantum of punishment in all cases of corruption.</p>	<p>if no direct pecuniary gain to the public official)</p> <p>(b) Obstruction of justice</p> <p>(c) Squandering public money/wasteful public expenditure</p> <p>(d) Gross perversion of Constitution/democratic institutions</p> <p>(e) ‘Collusive Bribery’ causing loss to state, public or public interest to be made a special offence</p> <p>➤ The words “<i>shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine</i>” in Sections 7, 8, 9, 10, 11 and 12 of the Prevention of Corruption Act, 1988 shall be replaced with “<i>shall be punishable with imprisonment which shall be not less than five years but which may extend to fifteen</i></p>
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5.	Confiscation of Properties of Corrupt Public Servants	<ul style="list-style-type: none"> ➤ The existing legal framework should be strengthened to provide for Confiscation of properties of corrupt public servants. 	<ul style="list-style-type: none"> ➤ A bill in the lines of the bill proposed by Law Commission’s 166th Report or SAFEMA Act to be passed along with Lokpal and Lokayukta Bill, 2011.
6.	Independence of Investigative Agencies	<ul style="list-style-type: none"> ➤ Once CVC is integrated with Lokpal, but functions under both Lokpal Act and CVC Act, that body will exercise superintendence and guidance of CBI. ➤ The CBI should be divided into two agencies – the normal crime investigation wing, and the anti-corruption wing. The anti-corruption 	<ul style="list-style-type: none"> ➤ Delhi Special Police Establishment Act should be amended giving CVC the power to appoint all prosecutors in corruption cases investigated by CBI ➤ The chapter on Lokayuktas should specifically provide for ACB appointments being made by Lokayukta in consultation

		<p>CBI will be accountable only to CVC and not to the government.</p> <ul style="list-style-type: none"> ➤ In states, ACB will be directly under Lokayukta supervision and will be accountable to it. ➤ Lokpal/Lokayukta to appoint independent prosecutors to prosecute all corruption, money laundering and <i>benami</i> properties cases. 	<p>with the Chief Secretary of the State; ACB functioning under Lokayukta's superintendence and guidance; and sanction of prosecution of any public servant, and appointment of public prosecutors in any corruption cases vesting in Lokayukta.</p>
7.	Strengthening Anti-Corruption Agencies	<ul style="list-style-type: none"> ➤ An international comparison suggests the conviction rate of CBI and State Anti Corruption Bureaus is low. ➤ The staff to population ratio is also relatively low and there are substantial vacancies in CBI and ACBs. ➤ These institutional gaps should be addressed to supplement the strong Lokpal and Lokayukta institution being envisaged. 	
8.	Removal of Public Servants	<ul style="list-style-type: none"> ➤ The law should provide for dismissal, removal or reduction in rank of officials on the basis of the enquiry of Lokpal/Lokayukta. 	<ul style="list-style-type: none"> ➤ The proviso under Section 20(7) may read as follows:

		<p>Further enquiry should not be made a requirement once Lokpal/Lokayukta concludes after enquiry that the conduct of a public servant deserves major punishment.</p>	<p><i>Provided that the Lokpal may make a recommendation to the appointing authority/competent authority to impose a punishment of dismissal or removal or reduction in rank on a public servant if he is satisfied that the evidence warrants such an action on grounds of commission of an offence or misconduct, or willful omission to perform a duty or gross incompetence in preventing an offence or misconduct.</i></p> <p><i>Provided further that no such recommendation shall be made without giving such public servant a reasonable opportunity of being heard provided further that such a recommendation of Lokpal shall be binding on the appointing authority, and such a public servant shall be awarded the punishment forthwith without further enquiry.</i></p> <p>A similar provision may be made for Lokayukta</p>
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9.	False Complaints and Penalties	<ul style="list-style-type: none"> ➤ The current clause raises concerns on the meaning of false and vexatious complaints and therefore needs more clarity in the wording. ➤ Moreover, the penalty specified in this clause is harsher than that stipulated by Prevention of Corruption Act. 	<ul style="list-style-type: none"> ➤ The current clause 46(1) be replaced with <i>“Notwithstanding anything contained in this Act, whoever makes any false, reckless and frivolous or vexatious complaint under this Act with malicious intent or without prima facie evidence shall, on conviction, be punished with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to two lakh rupees.”</i>
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